

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GAYLAND GILLASPIE

Claimant

VS.

AQUILA

Respondent,
Self-Insured

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Docket No. 1,006,262

ORDER

Respondent appealed the December 19, 2002 preliminary hearing Order for Compensation entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for a February 2002 accident in which claimant injured his left knee. In addition to the left knee injury, which respondent does not dispute, claimant also alleges that he either aggravated or injured his back while undergoing physical therapy and work hardening for the left knee. In the December 19, 2002 preliminary hearing Order for Compensation, Judge Avery granted claimant's request for benefits for his back.

Respondent contends Judge Avery erred by awarding claimant benefits for his back. Respondent argues claimant has had back symptoms for a number of years and that claimant has not proven that he either aggravated or injured his back during therapy. Accordingly, respondent requests the Board to deny claimant's request for benefits for his back.

Conversely, claimant contends the December 19, 2002 Order for Compensation should be affirmed.

The only issue before the Board on this appeal is whether claimant either injured or aggravated his back during therapy for the left knee. If so, claimant is entitled to workers compensation benefits for the back.

FINDINGS OF FACT

After reviewing the record compiled to date, the Board finds, as follows:

1. On approximately February 6, 2002, claimant injured his left knee while stepping out of the bed of a truck. The parties agree that the accident and resulting left knee injury arose out of and in the course of claimant's employment with respondent.
2. Claimant ultimately received left knee surgery. Following surgery, claimant was sent to physical therapy and work hardening. Work hardening included, among other activities, using weight machines, treadmill, stretching exercises, lifting and carrying boxes weighing between 35 and 50 pounds, and lifting boxes chest high. During therapy and work hardening, claimant began experiencing problems with his back.
3. Before the February 2002 accident, claimant had a history of back treatment. In 1988, claimant had a CAT scan and MRI, and was diagnosed as having a bulging or herniated disc. At that time, claimant was treated by orthopedic surgeon Dr. William Bailey. In November 2000, claimant again complained about low back pain after jumping away from a hot water heater.
4. Claimant did not experience any back symptoms at the time of the February 2002 accident. Further, claimant was not experiencing any back symptoms when he visited Las Vegas, Nevada, in June 2002.
5. Therapy notes dated July 11, 2002, first document claimant's complaint about back pain and spasms. The therapist did not note any additional back complaints until the next to last work hardening session, approximately one month later. On both August 12 and 14, 2002, the therapist began claimant's therapy sessions with ice packs due to his low back pain.
6. Although in other conversations with his supervisor claimant did not mention his back, shortly before he was scheduled to return to work on August 19, 2002, claimant advised respondent that he was having progressively worsening back pain that he attributed to therapy.
7. In October 2002, claimant saw Dr. Edward J. Prostic for a medical evaluation. Dr. Prostic determined claimant had aggravated preexisting degenerative disc disease in his lumbar spine. The doctor attributed the back injury to the work hardening program that claimant underwent for the left knee injury.
8. The Board finds claimant was not experiencing back symptoms when he began therapy but developed his present back pain in July and August 2002 while undergoing therapy and work hardening for the left knee injury.

CONCLUSIONS OF LAW

The Order for Compensation should be affirmed.

The Board finds and concludes that it is more probably true than not that claimant aggravated his back during the physical therapy and work hardening that he received for his left knee injury. Kansas law is well-settled that injuries that occur during therapy for a work-related injury are also compensable, as those later injuries are the direct and natural result of the initial work-related injury.

An injury which occurs during a participation in a work-hardening program or functional capacity evaluation made necessary by a previous work-related injury is a direct and natural result of the previous injury.¹

WHEREFORE, the Board affirms the December 19, 2002 Order for Compensation entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of February 2003.

BOARD MEMBER

c: Chris Miller, Attorney for Claimant
Bill W. Richerson, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation

¹ *Frazier v. Mid-West Painting, Inc.*, 268 Kan. 353, Syl. ¶ 2, 995 P.2d 855 (2000).